

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 48 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

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SUHASBEN PRAHLADBHAI SHRIMALI 7

Versus

STATE OF GUJARAT

Appearance:

MR YN OZA for Petitioner No. 1-7
Mr. Amit Kotak, ASSTT.GOVERNMENT PLEADER
for Respondent No. 1.
MRS SASI V PARIKH for Respondent No. 2 and 3.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 02/08/2002

ORAL JUDGEMENT

This petition has been filed for quashing
and setting aside the order dated 12th August, 1988 and

for a direction to the respondents to operate the list prepared in the year 1986 on the basis of the circular dated 16th July, 1987 and to give posting to the teachers who are in the said list on the basis of seniority. The petitioners are female employees and have been posted to work in remote villages of Gandhinagar district. The Education Department found it proper on hardship and humanatation grounds that the posts of teachers at Gandhinagar should be filled up not by direct recruitment, but by giving district transfers and bringing female teachers from remote villages to Gandhinagar district to achieve the purpose of keeping husband and wife together. The Education Department, through District Education Committee, Gandhinagar took a decision to issue a cricular dated 16.7.1986 whereby the names and details were called from such eligible female teachers who are working in remote villages of Gandhinagar district and whose husbands are working at Gandhinagar. On the basis of the guidelines issued by way of the said circular, the District Education Committee, District Panchayat, Gandhinagar prepared a list in the year 1986 comprising of 63 female teachers and the petitioners find place int he said list at serial nos. mentioned in the above list. Outof the said list of 63 teachers, as and when vacancy arises at Gandhinagar, the list was being operated as per serial number and transfers were given and postings were also given at Gandhinagar in the year 1986-89. The candidates at serial nos. 1 to 37 except no. 3 were posted at Gandhinagar. The petitioner no. 4 was figuring at serial no. 3 in the said list. Her name was arbitrarily dropped at the relevant time and her juniors were given the postings at Gandhinagar.

2. The Education Department vide its letter dated 12th August, 1988 issued a clarification and instructions to the effect that the benefit of such transfer and posting at Gandhinagar should be extended to the wives of Government employees who are at Gandhinagar and also to District Panchayat employees. Even after that circular dated 12th August, 1988, the said list remained in operation on the basis of the earlier circular and several teachers were given posting at Gandhinagar and those postings were made in the year 1989. Although the second clarification dated 12th August, 1988 makes it clear that the said benefit is to be given to the wives of the employees of the State Government, or Panchayat employees, the circular was incorporated to mean that it cannot have retrospective effect. Therefore, the list which was prepared already in the year 1986 cannot be changed and unless that list

is exhausted, the circular will have prospective effect. The District Primary Education Officer, District Panchayat, Gandhinagar passed an order dated 6th October, 1990 whereby 18 female teachers were picked up from the list prepared in the year 1986 for posting at Gandhinagar, but the names of the petitioners have been dropped because the respondents have not given posting to the petitioners as they are not working with the State or District Panchayat. The petitioners challenge the clarification dated 12.8.88 issued by the Government by which the eligibility of the petitioners for posting at Gandhinagar has been taken away. It is further stated by the clarification dated 12.8.1988, the benefit is available only to the wives of the State Government employees as well as District Panchayat employees which is violative of Articles 14 and 16 of the Constitution. The exception is a discrimination and against equality and fairness. Therefore, it is not sustainable in the eye of law.

3. By the circular dated 12.8.1988, the benefit has been made available to the wives of the State Government or District Panchayat employees and that is against public policy and discriminatory. All the employees should be treated at par. It is also stated that by an order dated 6.10.1990, 18 teachers have been posted at Gandhinagar and they have filed Regular Civil Suit no. 200 of 1990 in the Court of Civil Judge (J.D.), Gandhinagar. In the said suit, exh. 5 was also filed for staying the order dated 6.10.1990. Initially, ex parte injunction was granted, but ultimately the application exh. 5 was rejected by an order dated 31st December, 1990. However, the injunction granted was made operative till 10th January, 1991 vide order dated 6.10.1990 and the petitioners have undertaken to withdraw the said suit from the said Court. That application for stay was rejected on the ground that the Court has no jurisdiction and the application had no merits. Hence, the petitioners have filed the present petition.

4. Affidavit-in-reply has been filed on behalf of the respondent no. 2 by the District Primary Education Officer, District Education Committee, Gandhinagar, wherein it is stated that the guidelines were issued by the Deputy Secretary, Education Department vide order dated 14.2.1983 and 23rd July, 1986 to effect the transfer of primary school teachers in the event of vacancies being created due to grant of new posts due to death, retirement, resignation or any other. Following categories of primary teachers were made eligible for transfer (1) husband and/or wife of employees working in

Gandhinagar city or district (2) who are identified as affected. Applications were called and after scrutiny, two different lists were prepared (1) List based on husband/wife working in Gandhinagar and (2) list of persons affected based on the above list in the ratio of 3:1, vacancies in case arising are being filled in by transfer of primary teachers to Gandhinagar city schools. Following directions/guidelines, relevant details, applications were called for through principals of various schools which are in rural areas of Gandhinagar district. That letter was meant for obtaining required correct and relevant details. Based on the details received in response to the letter dated 17.6.1986, a list was prepared which includes 63 persons in which husband or wife were working in Gandhinagar city and another list of eight primary teachers who are declared as affected teachers. It was also clarified that recruitment, transfer or promotion etc. are being carried out strictly in line with the orders or the guidelines issued by the respective Secretaries of the Education Department under Government of Gujarat. Similarly, transfers of primary teachers are also being carried out in line with the guidelines issued by the Education Department, Government of Gujarat vide their orders dated 14.2.83, 23.7.1986 and 12.8.1988. It was clarified that the order dated 12.8.88 was applicable to husband/wife of employees working in Gandhinagar city or Gandhinagar district as indicated in para-3 of order dated 14.2.83. As per the clarification, the employees serving under Panchayat and Government of Gujarat and within Gandhinagar city and that clarification was followed from 12.8.88. The transfer has been considered sympathetically by Government of Gujarat to give an opportunity to live together, who were either husband/wife working under Panchayat or Government of Gujarat serving at different places and staying together at one place and can serve better. Certain guidelines have been issued vide order dated 12th August, 1988. Considering the guidelines, transfer of 37 teachers and 8 teachers have already been effected from list no.1 and list no. 2 respectively. Further list of 18 teachers has been prepared on 6.10.1990 for getting approval of the concerned authority. The petitioners though working in primary schools and District Education Committee, Gandhinagar, have not been included since they had not fulfilled requirements for considering the transfer to primary school of Gandhinagar city. As the petitioners had not fulfilled the requirements entitling them for transfer, the guidelines and requirements issued by the department vide order dated 12.8.88. Hence, their names have been removed from the list prepared. Those who do

not fulfil the requirements, their names have been deleted from the list. The employment to the employees of the Boards and Corporations are being given by the respective Boards and Corporations. Such employees are not treated at par with the employees directly recruited and working under Government Finance Department and Panchayat. The complaint made by seven petitioners of this petition is not in order. The names of primary teachers declared by letter dated 6.10.90 are for transfer and not for any other purpose such as promotion etc. and no monetary loss is caused to them and such transfer is only to be considered by the Government of Gujarat on the sympathetic point of view. The policy made by the Education Department of Government vide orders dated 14.2.83, 23.7.1986 and 12.8.1988 is only for transfer of primary teachers from rural areas of Gandhinagar district and Gandhinagar city and that policy is applicable only to the employees directly working under Government department and under Panchayats. That consideration cannot be extended to the employees working with Boards or Corporations or employees of temporary nature or employees working with private organisations. The benefit to the employees working under Government departments and Panchayat will get delayed.

5. The petitioners had filed Civil Suit no. 200 of 1990 in the Court of Civil Judge (J.D.), Gandhinagar and obtained an ex parte injunction. The application exh. 5 for stay order was rejected by an order dated 31st December, 1990 and that injunction was extended till 10th January, 1991 vide order dated 6th October, 1990. At present, no benefit can be given to the petitioners and their claims can be considered at the relevant time.

6. Another affidavit-in-reply has been filed on behalf of respondent nos. 1 and 3 in which it is stated that as per the policy of the State Government in the matter of transfers is to see the husbands or wives to remain under one group and, therefore, they should be transferred by way of preference, whose other partners are serving either in the State Government or in the Panchayats. This clarification was sought from the respondent no.1 and the clarification was made accordingly.

7. The respondent no. 2 has also filed additional affidavit indicating that transfer orders were issued for Smt. Manjulaben G.Patel, Smt. Ushaben Patel and Smt. Hansaben V. Shukla vide order dated 14.12.1989 and order dated 8.8.1989 respectively. Further search

was made to review the details of order issued during 1989 as also the relevant documents and papers concerned with three primary school teachers. It was found that transfer orders issued on 14.12.1989 in respect of Smt. Manjulaben Gopaldas Patel is in order and in line with the requirements specified in various orders including dated 12.8.88 as she was eligible for the transfer since her husband was serving as a Senior Clerk in the office of Director of Civil Supplies, Gandhinagar. The transfer order dated 8.8.1988 for Smt. Ushaben and Smt. Hasuben was issued by the District Primary Education Officer. A list was prepared out of the list prepared during the year 1986 including names of the primary school teachers who are eligible and fulfil requirements as specified under various orders, have been considered and not included in the present list and their names have been removed from the total list as prepared during 1986 as they do not fulfil the requirements specified under orders including the order dated 12.8.88. Any commitment made in past either by an overlook can or otherwise not be taken or considered as a rule or routine if such an action is not as per orders, principles and guidelines issued by Government or by an appropriate authority.

8. I have heard the learned advocate for the petitioners and the learned Assistant Government Pleader at length and perused the relevant papers on record. In the present case, the petitioners seek transfer on the basis of certain circulars issued by the Government or department concerned and their names were mentioned in the list, but later on their names were taken out as they were not fulfilling the requirements as per the circular of the Government or orders of the department concerned. The circulars issued to accommodate wives or husbands to remain in the same city or district is only for the convenience of the parties concerned and the Government is to follow those guidelines or circulars as far as possible, but those circulars and guidelines do not give any vested right that a particular person will work at one place and he or she will not work at any other place. As the post of teacher is transferrable and they have no legal right at all to remain at one place or to transfer at a particular place and at the most, the Government can pass appropriate orders in this respect, but they have no legal or vested right to remain at one particular place. At the most, the Government can pass appropriate orders in this respect, but they have no legal right or claim to remain or to be transferred at one place where husband or wife is working. The Government or departments concerned are also considering the case of teachers sympathetically and in the facts and circumstances of the case, this

Court is not required to give any direction to the respondents to transfer the petitioners from one place to any other particular place. As such, this petition has no merits.

9. In view of the above discussion, this petition fails and it requires to be dismissed. Accordingly, this petition is dismissed. Rule is discharged with no order as to costs. Interim relief, if any, stands vacated.

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